

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROCIO VEGA,

Defendant and Appellant.

E048392

(Super.Ct.No. FCH800405)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gerard S. Brown,  
Judge. Affirmed as modified.

Jonathan E. Demson, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, and Gary W. Schons, Assistant Attorney  
General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Rocio Vega of unlawful driving or taking of a vehicle. (Veh. Code, § 10851, subd. (a).) She contends there was insubstantial evidence that she had the ability to reimburse the county for court-appointed counsel (Pen. Code, § 987.8) or preparation of the presentence probation report (Pen. Code, § 1203.1b).<sup>1</sup> The People concede that these two orders should be stricken from the judgment. We accept the concession, reverse the orders, and direct the clerk to amend the sentencing order accordingly.

## **I. BACKGROUND**

The probation report states that defendant had \$4,000 in debts (which may or may not include \$2,120 in outstanding fines from her felony probation out of Los Angeles County), no assets, and had lost her job when she was arrested. She had been working as a cocktail waitress earning \$4,000 a month, but she was also receiving food stamps and was enrolled in Medi-Cal.

The trial court sentenced defendant to the midterm of two years in prison. The trial court imposed attorney fees of \$150 and imposed \$250 for probation presentence investigation (the probation report recommended \$505 for investigation costs).

## **II. REIMBURSEMENT OF APPOINTED COUNSEL FEES**

Defendant contends there was insufficient evidence to support the trial court's implied finding that she had the ability to pay \$150 in reimbursement of appointed counsel fees.

---

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

“Subdivision (b) of section 987.8 . . . provides that, upon the conclusion of criminal proceedings in the trial court, the court may, after giving the defendant notice and a hearing, make a determination of his present ability to pay all or a portion of the cost of the legal assistance provided him.” (*People v. Flores* (2003) 30 Cal.4th 1059, 1061.) “Subdivision (g)(2)(A), (B) of section 987.8 defines ‘ “[a]bility to pay” ’ as including a defendant’s ‘reasonably discernible future financial position,’ as well as his ‘present financial position,’ but stipulates that ‘[i]n no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining the defendant’s reasonably discernible future financial position.’ ” (*Id.* at p. 1063, fn. 2). “[T]here is a presumption under the statute that a defendant sentenced to prison does not have the ability to reimburse defense costs. Subdivision (g)(2)(B) of section 987.8 provides in pertinent part: ‘Unless the court finds unusual circumstances, a defendant sentenced to state prison shall be determined not to have a reasonably discernible future financial ability to reimburse the costs of his or her defense.’ ” (*Id.* at p. 1068.)

Nothing in the record shows unusual circumstances that as a prisoner defendant will be able to reimburse any costs of her defense. To the contrary, she lacks assets, and is already in debt. Furthermore, her sentence is longer than six months and thus there was no reasonably discernible possibility that she would resume employment within six months from sentencing. Accordingly, the reimbursement order should be reversed.

### **III. REIMBURSEMENT OF PROBATION INVESTIGATION COSTS**

Defendant contends there was insufficient evidence to support the trial court's implied finding that she had the ability to pay \$250 in reimbursement of the cost of preparing the presentence probation report.

The framework for the imposition of fees for presentence investigation costs under section 1203.1b is similar to, but slightly different from appointed counsel fees under section 987.8. For instance, section 1203.1b does not require a finding of unusualness in order for a defendant to be ordered to pay fees when they are sentenced to prison. (Compare § 1203.1b, subd. (e)(2), with § 987.8, subd. (g)(2)(B).) Section 1203.1b also permits the trial court to look forward one year from the hearing rather than the six months permitted in section 987.8. (Compare § 1203.1b, subd. (e)(2), with § 987.8, subd. (g)(2)(B).) Furthermore, subdivision (b)(4) of section 1203.1b requires the court "state on the record the reason for its order" if it "determines that the defendant's ability to pay is different from the determination of the probation officer."

Notwithstanding the differences in the two statutory frameworks, in the interest of judicial economy we accept the People's concession that there was insufficient evidence even under the expanded scope of section 1203.1b. Accordingly, we shall reverse the order that defendant pay \$250 in fees for the cost of preparing the presentence probation report.

### **IV. DISPOSITION**

The orders imposing fees of \$150 for court-appointed counsel (§ 987.8) and \$250 for preparation of the presentence probation report (§ 1203.1b) are reversed. The superior court

clerk is directed to amend the sentencing minute order to delete those provisions. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ  
P. J.

We concur:

HOLLENHORST  
J.

KING  
J.